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HOUSE BILL 2834

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State of Washington

61st Legislature

2010 Regular Session

By Representatives Probst, Hurst, Sullivan, Hope, Quall, Chase, Kelley, Wallace, Hunt, Conway, Haigh, Kenney, and Simpson; by request of Superintendent of Public Instruction

Read first time 01/14/10. Referred to Committee on Education.

1 AN ACT Relating to gang and hate group activity on school grounds  
2 and at school activities; amending RCW 28A.225.225 and 28A.600.455; and  
3 adding a new section to chapter 28A.635 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 28A.635  
6 RCW to read as follows:

7 (1) The legislature finds that gang and hate group activity on  
8 school grounds and at school activities places staff and students at  
9 risk of intimidation and violence, can create a hostile school  
10 atmosphere, and interferes with the educational mission of schools.  
11 The legislature further finds that gang and hate group activity has  
12 spread from urban areas to suburban and rural areas of the state, and  
13 that because of the highly mobile nature of modern gangs, no region is  
14 immune to the effects of criminal street gang activity.

15 (2) It is the intent of the legislature that the schools of the  
16 state will be free of the negative influences of criminal street gangs  
17 and hate groups that are inconsistent with the maintenance of a  
18 positive and safe school climate. The legislature finds that clearly  
19 stated school policies are necessary to protect student due process

1 rights and it is the intent of the legislature that all schools will  
2 have consistent policies and procedures to address gangs and hate  
3 groups and any associated conduct and behavior. The legislature also  
4 finds that suppression must be combined with prevention and  
5 intervention to effect long-term reductions in gang and hate group  
6 activity, and intends that the use of school discipline will be  
7 balanced against gang prevention and intervention programs, alternative  
8 learning placements, and dropout prevention programs.

9 (3) Policies and procedures enacted pursuant to this section must  
10 be constructed and applied in a manner that does not discriminate on  
11 the basis of race, creed, color, national origin, religion, sex, or  
12 sexual orientation, and must be consistent with the requirements of RCW  
13 49.60.030. The superintendent of public instruction shall require  
14 reporting of discipline for criminal street gang and hate group conduct  
15 to monitor for disproportional impact on protected groups.

16 (4) By September 1, 2011, the board of directors of each school  
17 district shall enact an antigang policy or modify an existing policy to  
18 be consistent with the requirements in this section. The policy must  
19 prohibit criminal street gang and hate group activity on school  
20 property and school vehicles, and at all school activities, and must  
21 outline a procedure that implements the policy in a manner consistent  
22 with all pertinent statutes, rules, and any guidance provided by the  
23 superintendent of public instruction.

24 (5) The antigang policy and associated procedure of each district  
25 shall, at a minimum, include:

26 (a) A statement that criminal street gang and hate group activities  
27 are prohibited on school properties and at school events for the  
28 purpose of promoting safety and the educational mission;

29 (b) Definitions of all terms, including "criminal street gang,"  
30 "gang member or associate," "gang activity," "hate group," and "hate  
31 group activity" consistent with the definitions in RCW 28A.600.455 and  
32 definitions provided in guidelines or rules adopted by the  
33 superintendent of public instruction;

34 (c) Specific guidelines to be used for determining if a student  
35 falls under the definition of a member or associate of a criminal  
36 street gang or hate group for the purpose of disciplinary action, and  
37 an avenue for a student to appeal that determination and/or have it  
38 later removed from his or her record;

1 (d) A provision that no student may be disciplined unless the  
2 student knowingly violates the policy or published rules of the school  
3 district, and methods by which parents and students are notified of  
4 what specific clothing, symbols, gestures, or other activity are deemed  
5 by the school district to be gang or hate group-related; and

6 (e) An outline of progressive discipline steps for violations of  
7 the policy, including appropriate interventions other than suspension  
8 for first infractions, except in the case of exceptional misconduct as  
9 defined under WAC 392-400-245.

10 (6) The superintendent of public instruction shall convene a work  
11 group to advise the development of rules and guidance deemed necessary  
12 to implement this section, including definitions of terms and  
13 specification of what types of conduct may be considered gang or hate  
14 group-related. The membership of the work group must include  
15 representatives of stakeholder groups including school directors and  
16 administrators, civil rights organizations, the state ethnic  
17 commissions, the tribal leaders' congress, parents, students, and law  
18 enforcement. The superintendent of public instruction shall report the  
19 results of the work group to appropriate committees of the legislature  
20 and make guidance, definitions, and draft rules available to school  
21 districts by December 1, 2010.

22 (7) The Washington state school directors' association and the  
23 office of superintendent of public instruction, in collaboration with  
24 the task force on gangs in schools and other stakeholders, shall  
25 develop and make available to school districts a model policy and  
26 procedure by January 1, 2011.

27 **Sec. 2.** RCW 28A.225.225 and 2009 c 380 s 7 are each amended to  
28 read as follows:

29 (1) Except for students who reside out-of-state and students under  
30 RCW 28A.225.217, a district shall accept applications from nonresident  
31 students who are the children of full-time certificated and classified  
32 school employees, and those children shall be permitted to enroll:

33 (a) At the school to which the employee is assigned;

34 (b) At a school forming the district's K through 12 continuum which  
35 includes the school to which the employee is assigned; or

36 (c) At a school in the district that provides early intervention

1 services pursuant to RCW 28A.155.065 or preschool services pursuant to  
2 RCW 28A.155.070, if the student is eligible for such services.

3 (2) A district may reject applications under this section if:

4 (a) The student's disciplinary records indicate a history of  
5 convictions for offenses or crimes, violent or disruptive behavior, or  
6 criminal street gang or hate group membership or activity that raises  
7 significant concerns for staff or student safety;

8 (b) The student has been expelled or suspended from a public school  
9 for more than ten consecutive days and there is evidence that admission  
10 of the student would present a significant risk of disruption of the  
11 educational environment or significant concern for staff or student  
12 safety. Any policy allowing for readmission of expelled or suspended  
13 students under this subsection (2)(b) must apply uniformly to both  
14 resident and nonresident applicants; or

15 (c) Enrollment of a child under this section would displace a child  
16 who is a resident of the district, except that if a child is admitted  
17 under subsection (1) of this section, that child shall be permitted to  
18 remain enrolled at that school, or in that district's kindergarten  
19 through twelfth grade continuum, until he or she has completed his or  
20 her schooling.

21 (3) Except as provided in subsection (1) of this section, all  
22 districts accepting applications from nonresident students or from  
23 students receiving home-based instruction for admission to the  
24 district's schools shall consider equally all applications received.  
25 Each school district shall adopt a policy establishing rational, fair,  
26 and equitable standards for acceptance and rejection of applications by  
27 June 30, 1990. The policy may include rejection of a nonresident  
28 student if:

29 (a) Acceptance of a nonresident student would result in the  
30 district experiencing a financial hardship;

31 (b) The student's disciplinary records indicate a history of  
32 convictions for offenses or crimes, violent or disruptive behavior, or  
33 criminal street gang or hate group membership or activity that raises  
34 significant concerns for staff or student safety; or

35 (c) The student has been expelled or suspended from a public school  
36 for more than ten consecutive days and there is evidence that admission  
37 of the student would present a significant risk of disruption of the  
38 educational environment or significant concern for staff or student

1 safety. Any policy allowing for readmission of expelled or suspended  
2 students under this subsection (3)(c) must apply uniformly to both  
3 resident and nonresident applicants.

4 (4) Except as provided in subsection (1) of this section, any  
5 district accepting applications from nonresident students for admission  
6 to an online learning program shall not deny a nonresident application  
7 on the basis of subsection (2)(a) or (b) of this section unless that  
8 program regularly requires the presence of the student on school  
9 property and there is a significant risk of disruption of the  
10 educational environment or a significant concern for staff or student  
11 safety caused by the student's presence.

12 (5) For purposes of subsections (2)(a) and (3)(b) of this section,  
13 (("gang" means a group which: (i) Consists of three or more persons;  
14 (ii) has identifiable leadership; and (iii) on an ongoing basis,  
15 regularly conspires and acts in concert mainly for criminal purposes))  
16 "criminal street gang member" and "criminal street gang activity" have  
17 the definitions in RCW 28A.600.455 and "hate group" and "hate group  
18 activity" have the definitions provided in the rules or guidance of the  
19 superintendent of public instruction.

20 ~~((+4))~~ (6) The district shall provide to applicants written  
21 notification of the approval or denial of the application in a timely  
22 manner not to exceed five school business days from receipt unless  
23 extenuating circumstances exist. If the application is rejected, the  
24 notification shall include the reason or reasons for denial and the  
25 right to appeal under RCW 28A.225.230(3).

26 **Sec. 3.** RCW 28A.600.455 and 1997 c 266 s 2 are each amended to  
27 read as follows:

28 (1) A student who is enrolled in a public school or an alternative  
29 school may be suspended or expelled, consistent with other laws and  
30 rules related to student discipline, if the student is a member or  
31 associate of a criminal street gang or member of a hate group and  
32 knowingly engages in gang or hate group activity on school grounds or  
33 while engaged in any school-sponsored activity.

34 (2) ~~((("Gang" means a group which: (a) Consists of three or more~~  
35 ~~persons; (b) has identifiable leadership; and (c) on an ongoing basis,~~  
36 ~~regularly conspires and acts in concert mainly for criminal purposes.))~~  
37 The superintendent of public instruction, in consultation with the task

1 force on gangs in schools and the school safety advisory committee, may  
2 adopt rules pertaining to the discipline of students for gang-related  
3 or hate group-related behavior. Such rules shall include, but not be  
4 limited to, reasonable standards establishing whether a student falls  
5 under the definition of a gang or hate group member or associate,  
6 specific definitions of conduct considered gang or hate group activity,  
7 limits on disciplinary exclusions from school, and required reporting  
8 or recordkeeping. The superintendent of public instruction shall  
9 provide guidance to districts on the application of this section, and  
10 shall thereafter update such guidance as necessary.

11 (3) The definitions in this subsection apply throughout this  
12 section unless the context clearly requires otherwise.

13 (a) "Criminal street gang" means any ongoing organization,  
14 association, or group of three or more persons, whether formal or  
15 informal, having a common name or common identifying sign or symbol,  
16 having as one of its primary activities the commission of criminal  
17 acts, and whose members or associates individually or collectively  
18 engage in or have engaged in a pattern of criminal street gang  
19 activity. This definition does not apply to employees engaged in  
20 concerted activities for their mutual aid and protection, or to the  
21 activities of labor and bona fide organizations or their members or  
22 agents.

23 (b) "Criminal street gang associate or member" means any person who  
24 actively participates in any criminal street gang and who intentionally  
25 promotes, furthers, or assists in any criminal act by the criminal  
26 street gang.

27 (c) "Gang activity" means any act that is committed for the benefit  
28 of, at the direction of, or in association with any criminal street  
29 gang, or is committed with the intent to promote, further, or assist in  
30 any criminal conduct by the gang, or is committed for one or more of  
31 the following reasons:

32 (i) To gain admission, prestige, or promotion within the gang;

33 (ii) To increase or maintain the gang's size, prestige, dominance,  
34 or control in any geographical area;

35 (iii) To exact revenge or retribution for the gang or any member of  
36 the gang;

37 (iv) To obstruct justice, or intimidate or eliminate any witness  
38 against the gang or any member of the gang;

1       (v) To directly or indirectly cause any benefit, aggrandizement,  
2 gain, profit, or other advantage for the gang, its reputation,  
3 influence, or membership; or

4       (vi) To provide the gang with any advantage in, or any control or  
5 dominance over any criminal market sector, including, but not limited  
6 to, manufacturing, delivering, or selling any controlled substance  
7 (chapter 69.50 RCW); arson (chapter 9A.48 RCW); trafficking in stolen  
8 property (chapter 9A.82 RCW); promoting prostitution (chapter 9A.88  
9 RCW); human trafficking (RCW 9A.40.100); or promoting pornography  
10 (chapter 9.68 RCW).

11       NEW SECTION.     **Sec. 4.**     If any provision of this act or its  
12 application to any person or circumstance is held invalid, the  
13 remainder of the act or the application of the provision to other  
14 persons or circumstances is not affected.

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